HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Fisheries and Oceans

FOPO • NUMBER 102 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, May 22, 2018

Chair

Mrs. Bernadette Jordan

Standing Committee on Fisheries and Oceans

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● (0845)

[*English*]

The Chair (Mrs. Bernadette Jordan (South Shore—St. Margarets, Lib.)): Good morning, everyone, and welcome to the 102nd meeting of the Standing Committee on Fisheries and Oceans.

Pursuant to the order of reference of Monday, April 16, 2018, we are considering Bill C-68, an act to amend the Fisheries Act and other acts in consequence, and today we are on clause-by-clause.

Before we get started, I'd just to like welcome a few people to the meeting today.

We have Stéphane Lauzon, the MP for Argenteuil—La Petite-Nation. Elizabeth May, MP for Saanich—Gulf Islands, is no stranger to this committee. Dave Van Kesteren, MP for Chatham-Kent—Leamington is with us. Thank you for joining us today.

Also, our departmental officials are here today to answer any technical questions we may have. We have Adam Burns, Director General, Fisheries Resource Management; Darren Goetze, Director General, Conservation and Protection; Gorazd Ruseski, Senior Director, Aboriginal Program; Mark Waddell, Director General, Fisheries and Licence Policy; and Nicholas Winfield, Director General, Ecosystems Management.

We're going to move to clause-by-clause, and I'd just like to provide members with a few comments on how committees proceed with clause-by-clause consideration of a bill.

As the name indicates, this is an examination of all clauses in the order in which they appear in the bill. I will call each clause successively. Each clause is subject to debate and a vote. If there are amendments to the clause in question, I will recognize the member proposing the amendment, who may explain it. The amendment will then be open for debate. When no further members wish to intervene, the amendment will be voted on.

Amendments will be considered in the order in which they appear in the package which each member received from the clerk. If there are amendments that are consequential to each other, they will be voted on together. In addition to having to be properly drafted in a legal sense, amendments must also be procedurally admissible. The chair may be called upon to rule amendments inadmissible if they go against the principles of the bill or beyond the scope of the bill, both of which were adopted by the House when it agreed to the bill at second reading, or if they offend the financial prerogative of the crown.

If you wish to eliminate a clause from the bill, the proper course of action is to vote against that clause when the time comes, not to propose an amendment to delete it.

Amendments have been given a number in the top right corner to indicate which party submitted them. There is no need for a seconder to move an amendment. Once moved, you would need unanimous consent to withdraw the amendment. During debate on an amendment, members are permitted to move subamendments. These subamendments do not require the approval of the mover of the amendment. Only one subamendment may be considered at a time, and that subamendment cannot be amended. When a subamendment is moved to an amendment, it is voted on first, then another subamendment may be moved, or the committee may consider the main amendment and vote on it.

Once every clause has been voted on, the committee will vote on the title of the bill itself. An order to reprint the bill may be required if amendments are adopted so that the House has the proper copy for use at report stage.

Finally, the committee will have to order the chair to report the bill to the House. That report contains only the text of any adopted amendments, as well as an indication of any deleted clauses.

I thank the members for their attention, and wish everyone a productive clause-by-clause consideration of Bill C-68.

(On clause 1)

The Chair: We have amendment PV-1, in the name of Ms. May.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Madam Chair, good morning and forgive me but I need to put on the record that if I want to exercise a right I would ordinarily have at report stage, that right was removed by the motion this committee passed which requires me to be here at clause-by-clause if I want to put forward amendments. I don't move the amendments, so it's a difference from the original sketching out of the rules. I'm in a very different position in that all my amendments are deemed to have been moved. I can't withdraw them; I can't do anything about them. I get to speak to them. These are the terms of the motion, and it's identical in every committee, which has the effect of restricting my rights, and it increases my workload—that's just a side complaint—because I also have Bill C-69 for the rest of today.

Let me put this forward very quickly, because I do believe this is a good bill and I hope we'll pass it expeditiously, but it can be improved.

My amendment PV-1 is to respond to a number of witnesses who we heard at committee, particularly West Coast Environmental Law, whose brief looks at the importance of the concept of environmental flows and water flows, and expands our understanding of what "habitat" means by replacing, under the purposes of the act, subsection 2(2) with the following:

> For the purposes of this Act, the quantity, timing and quality of the water flow that are necessary to sustain the freshwater or estuarine ecosystems of a fish habitat are deemed to be a fish habitat.

I note, Madam Chair, that my friend, Mr. Donnelly, has a similar amendment, but either one of them would be great.

The Chair: On that note, if PV-1 is adopted, NDP-1 cannot be moved, as there is a line conflict. Also, if PV-1 is defeated, so is NDP-1, as they are identical.

Is there any discussion on the amendment?

Mr. Arnold.

Mr. Mel Arnold (North Okanagan—Shuswap, CPC): Madam Chair, if the amendment should carry, I'd like to propose a subamendment first. The subamendment would be in the fourth line of the proposed amendment where it says "estuarine ecosystems of a" and would insert the word "natural" before "habitat are deemed to be a fish habitat", so it would be "a natural fish habitat".

● (0850)

The Chair: Is there any debate on the subamendment?

Mr. Donnelly.

Mr. Fin Donnelly (Port Moody—Coquitlam, NDP): Madam Chair, I'm wondering if Mr. Arnold or our legislative clerk could define what is the difference by adding "natural".

Mr. Philippe Méla (Legislative Clerk): Being a proceduralist, I won't be able to tell you that, but maybe the experts across the way can.

The Chair: Are there any departmental officials who can answer that question?

Mr. Winfield.

Mr. Nicholas Winfield (Director General, Ecosystems Management, Department of Fisheries and Oceans): It is extremely difficult to define a "natural" ecosystem, because many water bodies have had some form of human alteration at some point in time. That becomes the challenge of using the term "natural".

The Chair: Mr. Hardie.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): Yes, I think the subamendment might preclude protection from something that had been remediated or basically improved through habitat banking, etc. To put the condition of a "natural" one in there might limit what in fact could be protected.

The Chair: Mr. Arnold.

Mr. Mel Arnold: This brings up the reason I believe there needs to be some delineation in this proposed amendment: to delineate from drainage canals that are done to protect municipalities and to protect farmers who need to drain their fields. These drainage ditches often become fish habitat but never were before they were artificially introduced.

(Subamendment negatived [See *Minutes of Proceedings*])

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 1 as amended agreed to [See *Minutes of Proceedings*])

The Chair: Because of the conflict, NDP-1 will no longer be voted on.

(Clause 2 agreed to)

(On clause 3)

The Chair: We have a number of amendments.

We will start with NDP-2. If NDP-2 is adopted, NDP-3 and CPC-1 cannot be moved, as there is a line conflict.

Mr. Donnelly, would you like to speak to NDP-2?

Mr. Fin Donnelly: Madam Chair, I would like to withdraw this amendment, as it's covered in NDP-3.

The Chair: Thank you.

Mr. Arnold.

Mr. Mel Arnold: Madam Chair, don't you need unanimous consent to withdraw?

The Chair: I'm being told that technically he does not need unanimous consent because it was not moved. He withdrew it.

If NDP-3 is adopted, CPC-1, PV-2, and CPC-2 cannot be moved, as there is a line conflict.

Mr. Donnelly, would you like to speak to NDP-3?

Mr. Fin Donnelly: Madam Chair, I think NDP-3 strengthens the purpose clause by adding "rebuilding fish stocks" and the UN Declaration on the Rights of Indigenous Peoples.

The Chair: Ms. May.

● (0855)

Ms. Elizabeth May: Madam Chair, since I won't be able to speak to this after this vote and your motion requires that I speak to every amendment if I choose to, I just want to say that I think it's an extremely important amendment in order to ensure that we're recognizing the United Nations Declaration on the Rights of Indigenous Peoples. I think it's consistent with all the good work that has been done on this act so far.

The Chair: Thank you, Ms. May.

Mr. Arnold.

Mr. Mel Arnold: Madam Chair, I'd like to propose a subamendment to proposed paragraph 2.1(b) of this amendment, that the word "proper" be stricken. It simply indicates that possibly things are not being done properly now and is a very subjective term.

The Chair: Shall the subamendment carry?

(Subamendment negatived [See *Minutes of Proceedings*])

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We'll now go to CPC-1. If CPC-1 is adopted, PV-2 and CPC-2 cannot be moved, as there is a line conflict.

Mr. Arnold, would you like to speak to CPC-1?

Mr. Mel Arnold: Madam Chair, I think the amendment is self-explanatory. It's combining the purposes into the act. I would like to move a subamendment, similar to the one on the previous amendment, that we strike the word "proper" for the same reason, that it's a subjective term.

The Chair: I'm afraid that you can't move a subamendment to your own amendment.

Mr. Mel Arnold: Okay. This was Mr. Doherty's.

The Chair: But you are replacing Mr. Doherty.

Mr. Mel Arnold: Okay.

The Chair: Someone else from your party is able to do it.

Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Leamington, CPC): Madam Chair, I'm replacing Todd Doherty.

The Chair: Since you were moving the amendment, it becomes your amendment. Therefore, someone else has to remove the amendment in order for you to put in a subamendment, or the other way around.

Mr. Miller.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): This is lunacy, but I'll move it.

The Chair: Thank you. We will now move to the vote on the subamendment.

(Subamendment negatived [See *Minutes of Proceedings*])

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We're moving to PV-2.

Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, could I get a copy of the CPC motions? Does the clerk have an extra copy?

A voice: [*Inaudible—Editor*]

The Chair: We will now move to PV-2. If PV-2 is adopted, CPC-2 cannot be moved, as there is a line conflict.

Ms. May.

Ms. Elizabeth May: Madam Chair, I've spoken to Green Party-2 in relation to when Fin moved his similar amendment. It's supporting "long-term conservation" and use of fisheries and the "restoration of fish and fish habitat". Again, it's inserting this so it's clear that we're moving towards reconciliation and the recognition of both section 35 of the Constitution Act and the United Nations Declaration on the Rights of Indigenous Peoples. I'm sorry if I jumped the gun earlier.

Thank you.

(Amendment negatived [See *Minutes of Proceedings*])

● (0900)

The Chair: We are now on CPC-2.

Mr. Arnold.

Mr. Mel Arnold: I'd like to move that amendment.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We are now on PV-3.

Ms. Elizabeth May: Now that I have the mike again, I was very grateful for support on my first amendment and I want to thank the majority of the members of this committee.

This is pursuing the change found on page 4, between lines 13 and 16, to expand the duty of the minister when considering matters that could constitute an adverse effect on the rights of indigenous peoples. To protect rights for indigenous peoples throughout the bill, the expansion eliminates the concept that they're only acting when there are adverse effects.

My amendment would strengthen that language by saying "upholds the protection provided for the rights of Indigenous peoples" by the recognition and affirmation of section 35 of the Constitution. It then adds a proposed subsection 2.4(2) to "take all measures necessary to ensure that the act is administered in a manner that is consistent with the United Nations Declaration on the Rights of Indigenous Peoples", which is further qualified and specified by noting the date on which it was adopted.

Thank you, Madam Chair. I appreciate the chance to put forward this amendment.

The Chair: Thank you, Ms. May.

If PV-3 is adopted, NDP-4 cannot be moved, as there is a line conflict. Also, if PV-3 is defeated, so is NDP-4, as they are identical.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We are now on PV-4.

Ms. Elizabeth May: Madam Chair, this is based on a recommendation from the Tsleil-Waututh testimony before the committee to revise decision-making considerations to more accurately reflect and inform modern exercise of ministerial discretion, and to promote the administration of the Fisheries Act.

In doing so, it somewhat reduces the discretion of the minister and specifies the considerations to include traditional knowledge, which is expanded. Although traditional knowledge is currently listed as a consideration, my amendment would further define it by regulation, so that there will be more opportunity for indigenous peoples to put in specificity as to what is meant by traditional knowledge through subsequent regulation.

Also, it recognizes there may be agreements with governments of provinces, and is expanded to include climate change as a specific feature, "the conservation of biological diversity" as another specific consideration, "fish habitat restoration plans, action plans, cumulative effects assessments and any other type of management plan", and finally, "the rights, including fishing rights, of Indigenous peoples", recognizing that those rights derive from both section 35 of the Constitution and the United Nations Declaration on the Rights of Indigenous Peoples.

The Chair: If PV-4 is adopted, NDP-5, CPC-3, and LIB-1 cannot be moved, as there is a line conflict.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We are now on NDP-5.

If NDP-5 is adopted, CPC-3 and LIB-1 cannot be moved, as there is a line conflict.

Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, this amendment adds climate change, conservation of biological diversity, working with first nations and first nation governments, and would give more certainty to the minister's ability to change owner-operator provisions for the Pacific coast in the future.

(Amendment negatived [See *Minutes of Proceedings*])

● (0905)

The Chair: Next is CPC-3.

Mr. Mel Arnold: Madam Chair, I am moving this amendment.

The fourth paragraph adds "other fish harvesters in commercial inshore fish-". I believe we heard much testimony in committee that it wasn't just licence holders, that it was fisheries, the active fish harvesters, that needed to be considered. That's why we're asking for that to be inserted.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Next is LIB-1.

Mr. Ken Hardie: This simply brings the language into harmony with Bill C-69. It would use the same language. It's just the term. It's meant to apply to both pieces of legislation.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Next is CPC-4. If CPC-4 is adopted, CPC-5 cannot be moved as there is a line conflict.

Mr. Arnold.

Mr. Mel Arnold: Madam Chair, we bring this amendment forward so that the "knowledge of fish harvesters" would also be included in the minister's decision-making process. I think that should be a fairly straightforward inclusion in any of his decisions regarding the Fisheries Act.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Next is CPC-5.

Mr. Mel Arnold: I will withdraw this amendment.

(Clause 3 as amended agreed to)

(On clause 4)

The Chair: We have amendment CPC-6.

Mr. Mel Arnold: Madam Chair, I'd like to bring forward this amendment that the advisory panel established by the minister must include representatives of the fishing industry. Without their inclusion in the discussions, I believe they would be left out of the process that is so important to their livelihoods and the communities that they work in.

The Chair: Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, I'm wondering if we could ask our departmental officials what their concern would be or if they would be in favour of this addition.

The Chair: Does somebody from the department want to address CPC-6?

Mr. Mark Waddell (Director General, Fisheries and Licence Policy, Department of Fisheries and Oceans): Madam Chair, it might be the intent the advisory process would not be to enumerate specifically who's going to be a participant on the board but the current intent of the amendment, the wording we have, is to allow the minister to select representation as necessary, be it from indigenous communities, local communities, ENGOs, fishing industry representatives, and the like.

The Chair: Mr. Donnelly.

Mr. Fin Donnelly: What would be the downside to including this by adding that specificity?

The Chair: Mr. Winfield.

Mr. Nicholas Winfield: If I may, the advisory panels can be related to any subject matter under the Fisheries Act with respect to conservation, so it is not just limited to issues related to fisheries. By forcing having a fisheries organization on such a committee, it may not be the right fit for the purpose of that advisory committee.

● (0910)

The Chair: Thank you.

Mr. Hardie.

Mr. Ken Hardie: To the officials, is there anything elsewhere that suggests the rationale for appointing people to an advisory committee? To come to a fine point, it would not be good if the advisory committees were somehow stacked to lead to a predetermined outcome.

Mr. Nicholas Winfield: The main objective of the advisory committee is to ensure that there are experts available to provide advice to the minister, and so, depending on the subject of the advisory committee, it would be the minister who would determine what the appropriate level of expertise would be, but it would then be selected through a transparent process. My point is that it depends on the nature of what they are advising the minister on. That is one issue. The second is that to focus on one sector or one group without identifying others does imbalance the section with respect to who should be on a committee.

The Chair: Thank you.

Next is Mr. Arnold, and then Mr. Miller.

Mr. Mel Arnold: Madam Chair, would any panel be set up regarding the fisheries that wouldn't affect fishers, whether commercial fishermen or recreational fishermen? Basically all fisheries impact fisher people, so I believe they should be included. I believe Mr. Miller may have a subamendment he would like to propose.

The Chair: Mr. Miller.

Mr. Larry Miller: Madam Chair, I don't have any problem with it the way it is, but I'm getting the feeling that some do, and I'm going to propose a subamendment. It reads:

> (1.1) The members of an advisory panel must consider representatives of the fishing industry.

It would basically remove the word "include" and put in "consider". I think that would address Mr. Winfield's comment about the situations where it may not fit.

The Chair: Is there discussion on the subamendment?

Mr. Hardie.

Mr. Ken Hardie: The subamendment would have the advisory panel considering representatives, but the advisory panel doesn't do that. It would be the minister, I believe.

Mr. Larry Miller: Are you saying that the initial amendment wasn't worded to allow it?

I'm just dealing with what's in front of me, Ken.

Mr. Ken Hardie: I hear you.

Mr. Larry Miller: If to be clear we need to spell that out, I'm fine with that, but we should consult with Mr. Arnold on that as well.

The Chair: Mr. Donnelly, you wanted me to reread the subamendment.

The subamendment would say that members of the advisory panel "must consider representatives of the fishing industry."

(Subamendment negatived)

(Amendment negatived)

(Clause 4 agreed to)

The Chair: I'd like to ask for consent to group clauses 5 to 8, since there are no amendments.

An hon. member: Agreed, but carried on division.

(Clauses 5 to 8 inclusive agreed to on division)

(On clause 9)

● (0915)

Mr. Churence Rogers (Bonavista—Burin—Trinity, Lib.): Madam Chair, I would ask that clause 9 stand.

The Chair: A member has asked for clause 9 to stand, which means it will be reviewed after all other clauses have been disposed of. Do I have consent to let clause 9 stand until the end?

Mr. Arnold.

Mr. Mel Arnold: Are there further amendments that clause 9 will affect? We don't know.

The Chair: Mr. Miller.

Mr. Larry Miller: Can I ask Mr. Rogers what the rationale is?

Mr. Churence Rogers: Mr. Miller, it's been pointed out by my staff that there's a discrepancy in the text, and we need to get that corrected before we bring the clause forward.

(Clause 9 allowed to stand)

(Clauses 10 to 19 inclusive agreed to on division)

(On Clause 20)

The Chair: We're on amendment LIB-2.

Mr. McDonald.

Mr. Ken McDonald (Avalon, Lib.): I am moving this amendment. It clarifies the application of proposed designation project regimes within an ecologically significant area.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 20 as amended agreed to)

(On clause 21)

The Chair: We're on amendment CPC-7.

Mr. Mel Arnold: I'll move this, Madam Chair. It's adding clarification to clause 21 in reference to subsection 35(2).

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We're on amendment NDP-7.

Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, previously, proponents of minor works were issued letters of advice instructing them to proceed without an authorization, often leaving residual harm unaddressed and resulting in significant cumulative impacts. This clause implements a letter of advice, which will allow the minister to track smaller projects and identify cumulative effects. Degradation and loss of habitat is one of the greatest threats to freshwater and anadromous fish in Canada. Tracking, assessing, and addressing cumulative effects will be critical to turning the tide on habitat loss and realizing measurable improvements in the quality and amount of fish habitat in the future. While Bill C-68 includes a number of tools for managing impacts on fish habitat, it falls short in terms of advancing a comprehensive approach to cumulative effects.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: On amendment LIB-3, Mr. Hardie.

Mr. Ken Hardie: This simply harmonizes the language with Bill C-69.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: On amendment CPC-8, Mr. Arnold.

Mr. Mel Arnold: This inserts the words "the public interest; and".

Although the decisions of the minister and recommendations are often assumed to be in the public interest, I think it's pertinent that in the act, the public interest be stated as one of the minister's considerations in this clause.

(Amendment negatived)

● (0920)

The Chair: We're on amendment CPC-9.

Mr. Mel Arnold: Madam Chair, I'll move this amendment.

I believe we've heard testimony in committee that other jurisdictions are in the process of establishing standards of practice on streams, I think. Rather than the minister having to establish all of those standards individually within the department, they could adopt standards that have been developed, I guess, through professional organizations. I believe that would certainly speed up the process of interpretation of the act and the ability of industry and development to move forward.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Next is PV-5. If it is adopted, NDP-8 and LIB-4 cannot be moved, as there is a line conflict.

Ms. May.

Ms. Elizabeth May: Madam Chair, again, members of the committee will remember that I raised the issue of water flows and environmental flows in an earlier attempt to amend the purpose of the act. This deals with the same suggestions, but primarily from West Coast Environmental Law.

My amendment inserts at page 17 a couple of replaced lines to ensure that, as well as attention to removing obstructions or ensuring there's a full consideration of minister's orders to consider the factors that affect the survival and health of fish populations, we're adding in the idea of maintaining the flow of water necessary to permit the free passage of fish.

The current amendment says "maintain the flow of water that the Minister considers sufficient". We've made it an objective scientific test, as opposed to one of ministerial discretion if the changes to proposed paragraph 34.3(2)(f) pass, and, in proposed paragraph (g), to maintain at all times "the characteristics of the water and the water flow upstream and downstream of the obstruction" of things.

Last, we're inserting a brand new proposed paragraph (h) to "maintain the quantity, timing and quality of water flow that are necessary to sustain the freshwater or estuarine ecosystems of the fish habitat".

The Chair: Is there further discussion on PV-5?

Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, did you say you grouped...?

The Chair: No. If PV-5 is adopted, NDP-8 and LIB-4 cannot be moved, as there is a line conflict.

Mr. Fin Donnelly: So if it's defeated, then...?

The Chair: Then you can still move NDP-8, yes.

Mr. Fin Donnelly: Thank you.

The Chair: Mr. Arnold.

Mr. Mel Arnold: The subamendment to this would be on the final proposed paragraph (h). Again I'd ask that the word "natural" be inserted ahead of fish habitat in the last line.

The Chair: The subamendment is to insert the word "natural" in proposed paragraph (h), before "fish habitat".

(Subamendment negatived [See *Minutes of Proceedings*])

The Chair: We'll vote on the main amendment, PV-5.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Next is NDP-8. If NDP-8 is adopted, LIB-4 cannot be moved, as there is a line conflict.

Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, the long-standing approach to providing the flow of water needed for fish passage in protecting fisheries and fish habitat has been insufficient. The amendments proposed would strengthen provisions in the Fisheries Act for assessing and securing the flows needed for the free passage of fish and the protection of fish and fish habitat and would enhance the transparency of decisions regarding minister's orders.

(Amendment agreed to [See *Minutes of Proceedings*])

● (0925)

The Chair: LIB-4 has now been removed. We're on CPC-10.

Mr. Mel Arnold: Madam Chair, I will move this amendment.

It's adding a section in regard to clause 21:

> Before making an order referred to in subsection (2), the Minister shall consult with any federal or provincial department or agency that also exercises powers in relation to the protection of fish or fish habitat.

There are a lot of cases across the country where that jurisdiction may be permitted to the other jurisdictions. For the minister to move forward on this without consultation would be an error, I believe.

The Chair: Mr. Hardie.

Mr. Ken Hardie: Can we take a quick recess, please, Madam Chair?

The Chair: We'll suspend for two minutes.

● _____ (Pause) _____ ●

The Chair: I call the meeting back to order.

We are voting on CPC-10.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Next is NDP-9.

Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, this talks about the flow of water. It states:

> (7) The Minister may make regulations respecting the flow of water that is to be maintained to ensure the free passage of fish or the protection of fish or fish habitat.

It gives the minister the additional powers to consider this.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Next is CPC-11.

Mr. Arnold, would you like to speak?

● (0930)

Mr. Mel Arnold: Yes, Madam Chair.

I'm just trying to keep up here as we're moving through this quite quickly. The amendment states:

> (7) If a request is made to the Minister for the making of an order under subsection (2), the Minister must respond, with reasons, within 90 days after the day on which the request is received.

This was, I believe, submitted by some of the witnesses we had at committee, that reasons for decisions need to be transparent. This would add that requirement for the minister.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Next is LIB-5.

Mr. Morrissey.

Mr. Robert Morrissey (Egmont, Lib.): Madam Chair, I am moving amendment LIB-5. It simply standardizes the language in relation to "he" and "she" by replacing them with "minister".

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Next is LIB-6.

Mr. Robert Morrissey: Mr. Chair, I am moving this amendment.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 21 as amended agreed to on division)

(On clause 22)

The Chair: We have CPC-12.

Mr. Mel Arnold: Madam Chair, I'll move this amendment that the terminology be changed to include:

> or activity that results in the permanent harmful alteration, disrup-

There are many cases where work can be done in a watercourse that causes temporary disruption but no lasting ill effects are found. The terminology of "permanent harmful alteration" I believe is appropriate.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Next is PV-6.

If PV-6 is adopted, NDP-10 cannot be moved as there is a line conflict. Also, if PV-6 is defeated, so is NDP-10 as they are identical.

Ms. May.

Ms. Elizabeth May: Madam Chair, this is an amendment based on proposals from West Coast Environment Law and others whose testimony was that we have some lack of clarity around when the exemptions can be granted. Inserting the words in proposed subsection 35(1) to make it an authorization as opposed to a permit would clarify it. My amendment adds "unless they are authorized to do so under subsection (2)" at the end of proposed subsection 35(1) as it now reads, following the words "destruction of fish habitat".

That might seem redundant to some since proposed subsection 35 (2) does provide powers of exemption, but tying it together as an authorization is an attempt to keep the exemption provisions from being overly broad and also ensure that we're not talking about some permitting process yet to be defined or explained. Later, there is the use of the concept of a designated project with a permit. The use of the word "authorization" is clearer, which is why I'm suggesting we amend proposed subsection 35(1) to tie it into "unless they are authorized to do so under subsection (2)".

The Chair: Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, I lend my support to this amendment. I know that our amendment will be defeated if this one is, so I support this motion.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: PV-6 does not carry, so NDP-10 is also defeated.

Next is PV-7. If amendment PV-7 is adopted, NDP-11 becomes moot as they are identical. If PV-7 is defeated, so is NDP-11 as they are identical.

Ms. May, on PV-7.

● (0935)

Ms. Elizabeth May: Madam Chair, again, this is a suggestion from West Coast Environmental Law. As you can tell, I liked their brief very much.

On page 20 we'd be adding after line 3 provisions that speak to the question of serious harm to fish, in that exceptions would be applicable to areas other than ecologically sensitive areas or other areas of concern. Proposed subsection 35(2) would become:

> (2) A person may carry on a work, undertaking or activity, in an area other than an ecologically significant area or an area prescribed by regulations in which there are concerns about fish and fish habitat conservation.

Then it continues where we were before, "without contravening subsection (1) if" and then it continues on. It's a specific effort to continue to protect, with additional restrictions on ministerial discretion, areas that are designated as ecologically significant or areas where regulations exist for particular circumstances.

The Chair: Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, you said this amendment was the same as NDP-11.

The Chair: That's correct.

Mr. Fin Donnelly: I didn't hear Ms. May talk about defining letters of advice and requiring that letters of advice be posted on the public registry and requiring that letters of advice be used to assess cumulative impacts within the watershed.

I want to clarify whether it's Ms. May's intention to include that.

Ms. Elizabeth May: Madam Chair, I support those notions but I don't think they're captured in my amendment PV-7.

The Chair: So the wording is the same, but the rationale is what —

Ms. Elizabeth May: Yes.

I think Fin should speak to it. I shouldn't say that, but if he wants to make those points, this is his chance.

Mr. Fin Donnelly: I think I just did, so that's clear enough.

(Amendment negatived)

The Chair: Therefore, NDP-11 also does not carry.

Next is amendment PV-8.

Ms. May.

Ms. Elizabeth May: Madam Chair, in this amendment, we are in the same section of text, so we're still on page 20 and still within proposed subsection 35(2). Deleting lines 4 to 12 has the effect of removing the language around "or belongs to a prescribed class of works, undertakings or activities, as the case may be". This would revert the provision to the current version of the Fisheries Act to ensure that the effect is to be as protective of fish habitat as possible.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We'll move to LIB-7.

Mr. McDonald.

Mr. Ken McDonald: Madam Chair, I am moving this amendment. It basically says that clause 22 should be amended by replacing line 22 on page 20 with the following:

permitted or required under this Act;

I move that because it clarifies the scope of application of these provisions to ensure that any other authorization, permission, or requirement is an acceptable exception.

The Chair: Mr. Arnold.

Mr. Mel Arnold: Madam Chair, I'm just wondering if the member can explain the words "otherwise permitted". I believe the only change is removing the word "otherwise" from that final sentence. There are, potentially, other reasons. Could he explain a little further why the word "otherwise" is being removed?

● (0940)

Mr. Ken McDonald: "Otherwise" is too non-descriptive, I guess. By doing what I'm doing, it actually clarifies the scope of the application. That's why I put forward the amendment, to deal with that.

The Chair: Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, I'm wondering if we could have our departmental officials explain what this amendment would mean in terms of the requirement under the act.

The Chair: Mr. Winfield.

Mr. Nicholas Winfield: I think it really is a technical correction to ensure that, if there are other schemes that are used to issue an authorization permit under the act, those are duly considered. The idea is that the language around "authorized, otherwise permitted" is not as precise as referring specifically to a permit that is described in this act.

Mr. Fin Donnelly: Madam Chair, I have a follow-up question.

Could you provide an example?

Mr. Nicholas Winfield: In Bill C-68, there is the introduction of a permit scheme, where the word "permit" is used to define a statutory instrument. The term "permitted" is to refer to the permit scheme, whereas the language that previously read "otherwise permitted" is a bit vague around what it's specifically referencing.

Mr. Fin Donnelly: Thank you.

The Chair: Mr. Arnold.

Mr. Mel Arnold: I would ask the officials, again, if this would eliminate any other possibility for exemptions other than a permit or an authorization. Were there cases where there were exemptions issued before, which weren't under a permit?

Mr. Nicholas Winfield: The schemes for permitting include the new scheme for permits for projects, but may also include a fisheries licence, for example, which is under the fisheries provisions of the act. That's an example of another instrument found in the act that this would then refer to. It's intended to clarify that, if people are already authorized to do something, they meet the intent of this section of the act.

Mr. Mel Arnold: So are they authorized to do something under the current licence they have?

Mr. Nicholas Winfield: Which also deems them—

Mr. Mel Arnold: That is covered by authorization or the word "authorized", correct?

Mr. Nicholas Winfield: That's correct.

(Amendment agreed to)

The Chair: We'll turn to CPC-13.

Mr. Arnold.

Mr. Mel Arnold: Madam Chair, we heard from witnesses at committee that work or undertaking in artificial structures was unduly impacted or disallowed with the potential language here. This amendment would provide hydro facilities, for example, the ability to do work in a structure that was not originally intended to be frequented by fish.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Now we have PV-9. If PV-9 is adopted, NDP-12 becomes moot as they are identical. Also, if PV-9 is defeated, so is NDP-12 as they are identical.

Ms. May.

Ms. Elizabeth May: Madam Chair, this amendment proposes a new section that would be found after line 36 on page 20. It doesn't replace existing language; it's new. Proposed subsection 35(2.1) would ensure that any time there was a "harmful alteration, disruption or destruction of fish habitat resulting from the doing of anything that is authorized" by the minister, there would be an offset for the loss of fish habitat.

This bill, I think, does some really innovative things. We get to them later in clause 28 when we look at habitat banking.

However, this proposed subsection 35(2.1) would ensure that there would be a measure every time, so we would offset the loss of habitat. I'll just give the specifics from the amendment, "by, among other things,"—so it's not limited to these—"creating a new fish habitat, increasing the productivity of another fish habitat or maintaining productivity through artificial propagation." The amendment makes it required of the minister to find, essentially, a habitat substitution or augmentation somewhere else if there is a harmful alteration, disruption, or destruction of fish habitat. In other words, the old HADD provisions would always require a no net loss provision that is consistent with the compensation for loss of fish habitat that's found in the DFO habitat management plan where the concepts of productive capacity and no net loss are well understood. The department has used those concepts for a long time.

● (0945)

The Chair: Mr. Hardie.

Mr. Ken Hardie: It could be a question for staff.

The word "shall", of course, requires something to happen, as opposed to "may", which offers it as an option, but looking at the intention or the spirit of this amendment, is it covered elsewhere in the legislation?

Mr. Nicholas Winfield: It is. The factors that the minister must take into account do refer back to his or her consideration of offset plans and measures to avoid and mitigate impacts to fish and fish habitat. It is a consideration that the minister must make prior to the issuance of an authorization.

Mr. Ken Hardie: Must.

Mr. Nicholas Winfield: Yes.

The Chair: Ms. May.

Ms. Elizabeth May: This is just to say, and perhaps Mr. Winfield can clarify if I've misunderstood his interpretation, that there is a difference between saying that there "shall" be no net loss of fish habitat versus saying that the minister "shall consider" whether there should be no net loss of fish habitat. I think that without my amendment, providing no net loss of fish habitat remains at the minister's discretion, but it is a factor that he or she will consider.

Mr. Nicholas Winfield: That's correct.

The Chair: Mr. Donnelly.

Mr. Fin Donnelly: I'm glad we just had that last exchange, Madam Chair, because I think it does point out why this motion would strengthen the bill by adding the word "shall", as opposed to "shall consider" further down in the bill, and I think the response that Mr. Hardie got identifies that. I certainly support this amendment.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Therefore, NDP-12 is also defeated.

Now we have NDP-13. If NDP-13 is adopted, so is NDP-14 as they are consequential.

Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, this amendment ensures that all projects, works, undertakings, and activities that have the potential to result in a HADD, a harmful alteration, disruption, and destruction, of fish habitat should receive an authorization before they proceed. To address the issues of approval efficiency, an automatic approval could be issued for certain classes of projects through an online automated notification or application system that issues standard conditions in a letter of advice. That way, the minister is at least able to track those smaller projects and identify cumulative effects. We heard from many witnesses about how those smaller to mid-size projects are having a big impact on our fishery and fish habitat across the country. This talks about how the minister could have an additional tool to track that.

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 22 as amended agreed to on division)

(On clause 23)

The Chair: We have NDP-14.

Mr. Fin Donnelly: Madam Chair, I have a feeling this will have the same result as my previous amendment, NDP-13. Again, NDP-14 allows for the tracking of cumulative effects through letters of advice.

(Amendment negatived [See *Minutes of Proceedings*])

● (0950)

The Chair: Next is CPC-14.

Mr. Mel Arnold: Madam Chair, I am moving this amendment.

There are two sections to this. The first section is in terms of projects that may result in "the death of fish or in the harmful alteration". Those terminologies aren't used there. It's simply that any project would be covered under "designated project". This would take from the "designated project" classification projects that did not include the harmful alteration or the disruption of fish habitat.

The second part of this adds a second proposed section 34.4(2.1) after proposed section 34.4(2) and states that if the minister proposes to make recommendations "under subsection (2)", he shall "consult with the governments of any provinces that he or she considers" would "be interested in the proposed recommendation". It's simply adding a consultation level to the process of designation of ecologically significant areas.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We now have CPC-15.

Mr. Mel Arnold: Madam Chair, I'm trying to keep up with the paperwork here.

This is in reference to testimony we heard from hydro power generation entities that were interested in the changes to this act. Basically, they're concerned that they're going to be impacted by the death of any fish. This amendment says that the minister shall consult with those entities—the electrical producers, for example—in making the decisions. That's in proposed paragraph 35.2(2)(a). In proposed subsection 35.2(9), we're adding a consultation process with regard to those same hydro power producers. Proposed paragraph 35.2(10)(h) is establishing and awarding "fair and reasonable compensation" for people who suffer losses as a result of the designation of "ecologically significant" areas.

The Chair: Since CPC-15 has been moved, I have a ruling on this one. It is the belief of the chair that the amendment is inadmissible because it aims to create a compensation process that's not envisioned in the bill and that therefore would require a royal recommendation. This amendment is not admissible.

Mr. Arnold.

Mr. Mel Arnold: Madam Chair, if there were a subamendment to remove that proposed paragraph (h) requiring the compensation, would the remainder of the amendment be acceptable?

The Chair: That would work.

Mr. Larry Miller: I would so move.

The Chair: Mr. Miller has moved a subamendment to remove the section of the amendment that talks about compensation. We'll vote on the subamendment.

(Subamendment negatived [See *Minutes of Proceedings*])

The Chair: Since the subamendment did not carry, it is the ruling of the chair that this amendment is not admissible.

We'll be moving on then to PV-10.

Ms. Elizabeth May: Madam Chair, this amendment follows from the Governor in Council's ability to make regulations to designate ecologically sensitive areas. The preceding proposed subsection defines what an ecologically sensitive area is.

This amendment puts forward a process by which another government at a provincial level or an indigenous government—described in my amendment as an "Indigenous governing body"—can request the creation of the designation of an ecologically sensitive area. It also sets out that the minister must respond within 90 days, and with reasons.

It certainly would be advantageous for indigenous governing bodies and provincial governments to be able to take proposals for ecologically sensitive areas to the minister.

(Amendment negatived [See *Minutes of Proceedings*])

● (0955)

The Chair: Next is amendment PV-11.

If amendment PV-11 is adopted, NDP-15 becomes moot, as they are identical. Also, if PV-11 is defeated, so is NDP-15, as they are identical.

Ms. May.

Ms. Elizabeth May: Madam Chair, I would like to tell you where PV comes from, but you have probably all figured it out.

[*Translation*]

"PV" means "Parti vert", the Green Party.

[*English*]

When I had to start doing this—coming in for clause-by-clause—I think they worried at the time that if they called it "G" for "Green", everyone would think it was a government amendment. Never mind: one of these days, that might be the case.

Some hon. members: Oh, oh!

Ms. Elizabeth May: But for now,

[*Translation*]

we are talking about "Parti vert", the Green Party, amendment PV-11.

[*English*]

This is, I think, a very sensible proposal from West Coast Environmental Law: that whenever one of the various tentacles and arms of the federal government proposes to do something in an area that is designated an ecologically sensitive area—that would include funding decisions, activities, works, policies, whatever a different federal department or agency was doing that could affect an ecologically sensitive area—they would have to consult the Minister of Fisheries and Oceans in their processes.

To be forewarned is to be forearmed. Perhaps the Minister of Fisheries and Oceans would be able to point out alternatives. Who knows? If they don't consult, though, decisions could be made before the minister has a chance to make sure they understand the importance of ecologically sensitive areas.

Anyway, the amendment doesn't say what the minister would do; it just says other departments and agencies would have to consult with the Minister of Fisheries and Oceans when making decisions, within their own areas of mandate, that could have an impact on an ecologically sensitive area.

The Chair: Is there further discussion on amendment PV-11?

Mr. Hardie, then Mr. Donnelly.

Mr. Ken Hardie: Madam Chair, let me again ask staff, would this not have happened in the past and would it not happen in the future in any event?

One of the complications, I suppose, is that the new environmental process in Bill C-69 may be setting up some new regimes that I can't say I'm aware of. I guess the question is, will there be other agencies of government that would be able to unilaterally take the actions contemplated here, or in fact, is it pretty much standard fare that they would in any event, regardless of their authorities, consult with the minister?

Mr. Nicholas Winfield: You are correct in your conclusion that all entities that are proposing to do work, undertakings, or activities in a designated ecologically significant area must refer to the department for an authorization.

All projects will, then, be referred to the minister for review and authorization within an ecologically significant area. This is already addressed in the bill.

The Chair: Mr. Donnelly.

Mr. Fin Donnelly: Let me just follow up by asking, is this a requirement?

Mr. Nicholas Winfield: Yes, it is.

Mr. Fin Donnelly: Thank you.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Amendment NDP-15 therefore also does not carry.

We move to amendment NDP-16.

Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, this amendment allows for ecologically significant areas in habitat areas that are already highly stressed, for example, in habitats used by the wild salmon policy conservation units, within red or amber zones.

It requires the minister to respond to requests for designation of such areas within 90 days; requires the minister to respond to requests from provincial and indigenous governments, as well as from members of the public, for designations of ESAs; and requires the minister to provide reasons, if the ESA designation does not proceed.

(Amendment negatived [See *Minutes of Proceedings*])

● (1000)

The Chair: May I have consent to group clauses 23 to 27 together, as there are no amendments?

Mr. Mel Arnold: We need to do clause 23 separately.

The Chair: Yes, you're correct, Mr. Arnold.

(Clause 23 agreed to on division)

(Clauses 24 to 27 inclusive agreed to on division)

(On clause 28)

The Chair: We have amendment CPC-16.

Mr. Arnold.

Mr. Mel Arnold: Madam Chair, this amendment addresses the issues around habitat banking. The terminology used in the proposed act is "service area". We believe it would be more appropriate that the terminology be "within a watershed". There is no definition of "service area" that we can see.

I would ask the officials, is there a definition? How would a "service area" be determined?

Mr. Nicholas Winfield: You are correct that there is no definition in the act.

It is a concept used in habitat banking schemes around the world, giving flexibility to define the ecological area within the area of the project. The challenge with "watershed" is it is also open for definition as to what scale of watershed: anything from a small tributary up to a large river. The term "service area" is intended to provide some direction around how to define the boundaries of an ecological unit.

Mr. Mel Arnold: Would it be more appropriate, or more fish friendly, if instead of using the term "watershed" we inserted, "in waters accessible to fish indigenous to the service area"?

Mr. Nicholas Winfield: All of these do add clarity to the concept.

The Chair: Is there further discussion on CPC-16?

Mr. Arnold.

Mr. Mel Arnold: I may need to come back with some further wording then, if "watershed" isn't acceptable. I think we just heard that using terminology around "water accessible to fish natural to that system"....

The Chair: To do that, Mr. Arnold, we would have to stand clause 28 altogether, because we can't move forward.

Mr. Mel Arnold: Can we stand it and come back?

The Chair: Do we have consent to stand clause 28?

Mr. Donnelly.

Mr. Fin Donnelly: I had a question related to that.

Who decides what an ecological unit is?

Mr. Nicholas Winfield: This all has to be defined in policy for habitat banks.

An ecological unit, as you know, is different; for example, the wild salmon policy defines an ecological unit as a conservation unit. That has been defined as an area where a subpopulation uses that area to continue its life processes.

The term "conservation unit" has been used a lot in conservation planning. A wide range of terminology has been used for watershed units, but essentially it has to be defined in policy based on the fish populations in question, and the geographical constraints of an area.

Mr. Fin Donnelly: Thank you.

The Chair: We will stand clause 28.

(Clause 28 allowed to stand)

(On clause 29)

The Chair: We have amendment NDP-17.

● (1005)

Mr. Fin Donnelly: I'm not moving it.

The Chair: You're not moving it? Okay, it shall not be moved.

(Clause 29 agreed to on division)

(On clause 30)

The Chair: We have NDP-18.

Mr. Fin Donnelly: Madam Chair, this refers to the contents of the registry, and it adds a proposed paragraph:

> (a.1) any plans referred to in subsection 6.1(2), any amendments to it and any notices respecting the suspension of the plans;

That will provide greater transparency. The idea here, Madam Chair, is to increase transparency.

(Amendment negatived)

The Chair: We are on PV-12. If PV-12 is adopted, NDP-20 and CPC-18 cannot be moved as there is a line conflict, and NDP-23 becomes moot as its provisions would already be adopted.

Ms. May.

Ms. Elizabeth May: Madam Chair, I am very supportive of the creation of this registry in proposed section 42.2 of the newly numbered act.

Similar to Fin's attempt just a moment ago, my amendment PV-12 adds some additional content of what should be on the registry. In addition to what's now there, which would be any agreements between provincial or indigenous governments or standards or codes of practice, my amendment would add "any permit issued for the carrying out of a project that implements standards in the codes of practice".

Another point is to make sure that we post on the registry "the results of any studies, analyses, samplings or evaluations".

Finally, at the end of that section, we add a new proposed paragraph (g) that would require that we post on the registry "any statistical summaries of convictions for offences respecting fish and fish habitat protection and pollution prevention."

It makes the public registry more robust by providing more information.

The Chair: Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, I'll withdraw NDP-20.

The Chair: Do we have any other discussion on PV-12?

(Amendment negatived)

The Chair: We are on NDP-19.

Mr. Fin Donnelly: Madam Chair, this refers to the contents of the registry and adds a new proposed paragraph 42.3(1)(b.1) The addition is:

> any records relating to projects carried out in accordance with the standards and codes of practice established under section 34.2;

This allows for greater transparency. Again, this is to increase transparency.

(Amendment negatived)

The Chair: Next is CPC-18.

Mr. Mel Arnold: Madam Chair, this adds further to the registry. Currently, in the orders made by the minister, by him or her, under sections 34.3 and 37, this would add that the responses be in the registry as well.

(Amendment negatived [See *Minutes of Proceedings*])

Mr. Mel Arnold: Madam Chair, if I may point out something I just picked up on, the government members had been proposing amendments in a couple of different places throughout the bill where they were removing gender terminology. In proposed paragraph 42.3 (1)(c), at the bottom of page 33, they're referring to "him or her". I'm wondering if the government members would want to insert "the Minister".

The Chair: Which amendment is that, Mr. Arnold?

● (1010)

Mr. Mel Arnold: It's not an official amendment.

The Chair: It's the language of the bill.

Mr. Mel Arnold: It's the language of the bill. I noticed that previous amendments had addressed this discrepancy, and I'm wondering why it hasn't been addressed here.

The Chair: Does the government have an amendment to make the language gender neutral to "Minister"?

Mr. Hardie.

Mr. Ken Hardie: May I have one moment, please?

The Chair: We will suspend for two minutes.

● _____ (Pause) _____ ●

The Chair: Mr. Morrissey.

Mr. Robert Morrissey: Madam Chair, could we have the officials just confirm that this change will be compatible with the earlier change that was made in amendment LIB-5?

It would be? Okay.

It still amounts to the same.

The Chair: It would then say "That Bill C-68 be amended, on page 33, line 31, by replacing the words 'him or her' by 'the Minister'". That's (a). For (b), "on page 33, line 32, by replacing the words 'him or her' by 'the Minister'." Is there any further discussion on those amendments?

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: I believe we go back to amendment CPC-19.

Mr. Mel Arnold: Madam Chair, I move this amendment that "letter of advice" be included in the registry for documentation.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We are on amendment NDP-21.

Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, this refers to the contents of the registry, and it adds a proposed paragraph 42.3(1)(d.1), regarding "any letter of advice provided under section 35.01;" to allow for greater transparency.

(Amendment negatived)

The Chair: On NDP-22, go ahead, Mr. Donnelly

Mr. Fin Donnelly: Madam Chair, again, with regard to the contents of the registry, it adds a proposed new paragraph:

> (e.1) any regulations made under this Act; and

That includes the word "and", and this allows for greater transparency.

(Amendment negatived)

● (1015)

The Chair: We are on NDP-23.

Mr. Fin Donnelly: Madam Chair, once again, on the contents of the registry, it adds a proposed paragraph:

> (g) any statistical summaries of convictions for offences respecting fish and fish habitat protection and pollution prevention.

Again, this is focused on greater transparency.

(Amendment negatived)

The Chair: We are on amendment PV-13. If PV-13 is adopted, NDP-24 becomes moot, as they are identical. Also, if PV-13 is defeated, so is NDP-24, as they are identical.

Ms. May.

Ms. Elizabeth May: Madam Chair, this is a deletion with the purpose of dealing with what some witnesses pointed out was sort of odd, that some disclosure of documents is mandatory, and then there's a different category of "optional". By deleting lines 8 to 19 on page 34, the effect would be to ensure that the disclosure is mandatory. I'll just quote briefly from West Coast Environmental Law's brief:

> The rationale for making publication of some records mandatory, s. 42.3(1), and some records optional, s. 42.3(2), is unclear, and the public interest would best be served by mandatory disclosure of all records relevant to the administration and enforcement of the Act and impacts of works, undertakings and activities on fish and fish habitat.

At that point they went on to recommend the deletions that are found in PV-13.

[*Translation*]

Thank you.

[*English*]

The Chair: Mr. Hardie.

Mr. Ken Hardie: To staff, would there be provisions for the public to ask for records that weren't necessarily released by the minister?

Mr. Nicholas Winfield: The public always has the opportunity to request information through access to information. The intent of the public registry with the obligatory elements is to provide as much information as possible. The voluntary or the optional ones are those for which we don't have necessarily all this information or when it's information that's already publicly available through the annual report to the Parliament.

The Chair: Mr. Donnelly.

Mr. Fin Donnelly: I would like to add my support for this motion.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Therefore, NDP-24 is stricken.

(Clause 30 as amended agreed to on division)

(On clause 31)

The Chair: We have amendment PV-14.

Ms. May.

Ms. Elizabeth May: Madam Chair, this is going into the question of the list of regulations to be determined by the Governor in Council. The amendment adds that the regulation-making power would include:

> prescribing standards establishing the conditions under which the quantity, timing and quality of water flow to a fish habitat would be sufficient to not constitute a harmful alteration, disruption or destruction;

(Amendment negatived)

The Chair: We're on NDP-25. If NDP-25 is adopted, PV-15 becomes moot, as they are identical. Also, if NDP-25 is defeated, so is PV-15, as they are identical.

Mr. Donnelly, on NDP-25, please.

Mr. Fin Donnelly: Madam Chair, this adds a new paragraph calling for consultation with indigenous peoples of Canada to define "traditional knowledge".

The Chair: Ms. May.

Ms. Elizabeth May: Madam Chair, I will grab this opportunity, since if this is defeated, obviously my identical amendment would go down.

The term "traditional knowledge" is of concern for indigenous peoples, and I think we have an obligation under the Constitution to consult thoroughly on what we mean by that. Indigenous ways of knowing extend to something beyond what we might think of as traditional. I've heard concern from indigenous peoples that their knowledge of ecosystems in the context of this bill, of what's important for fish habitat and fish productivity, is not merely those things that come down through the ages, like a mason jar full of stuff that's preserved and that's your traditional knowledge. The traditional knowledge evolves.

The way in which it's defined is going to be critical for indigenous governments and indigenous peoples across Canada, which is why both the NDP amendment and the Green Party amendment attempt to have a regulation that further teases out what we mean by traditional knowledge, and that regulation will be made after there's a consultation process with indigenous peoples.

(Amendment negatived [See *Minutes of Proceedings*])

● (1020)

The Chair: PV-15 is also stricken.

Next is LIB-8.

Mr. Hardie.

Mr. Ken Hardie: Again, this just harmonizes with Bill C-69.

I would note, Madam Chair, that the usage we're gravitating to is indigenous knowledge as opposed to traditional knowledge. I will make the comment that in addition to the indigenous communities, there are non-indigenous communities up and down our coasts. I'm going to be going back looking for community knowledge, or perhaps we can use the term "traditional knowledge" to apply to the non-indigenous people, but I think that has to be reflected in here somewhere. I would ask staff if, in fact, non-indigenous knowledge by non-indigenous people is factored into the decision-making process.

Mr. Mark Waddell: That is an area that's identified within the considerations section of the bill, for the minister to consider community knowledge as well as traditional knowledge.

The Chair: Mr. Donnelly.

Mr. Fin Donnelly: I'd just ask, along the same lines, if traditional knowledge is defined in the act or will be defined.

Mr. Gorazd Ruseski (Senior Director, Aboriginal Program, Department of Fisheries and Oceans): The intent would be to define it through policy over time, in the course of the implementation of the act.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: On LIB-9, we have Mr. Hardie.

Mr. Ken Hardie: There's really no comment on this. This just offers some clarification.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 31 as amended agreed to on division)

(On clause 32)

The Chair: We have NDP-26. If NDP-26 is adopted, PV-16 and CPC-20 become moot, as the provisions would already be adopted.

Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, I hope this one can go through, especially proposed subsections 43.3(3) and (4).

The setting of new marine biodiversity areas being by regulations in proposed section 43.3 is a good thing, and the minister will be able to impose fisheries closures to protect the marine environment, which is also a good thing. Other governments want fisheries closures for their MPAs, like the Province of B.C. and also indigenous MPAs. There are first nations on the Pacific coast that have declared their own areas and want commercial fishing out. This amendment would allow for that. It would also amend the bill to specify that provincial and indigenous governments may request the imposition of long-term fisheries closures. It creates a duty for the minister to respond to such requests within a specified time, and provides reasons for his or her decision.

I so move this amendment.

The Chair: Is there any discussion on NDP-26?

Mr. Hardie.

Mr. Ken Hardie: Madam Chair, again, I have a question for staff, on proposed subsection 43.3(3), which says, "The government of a province or an Indigenous governing body may make a request to the Minister", etc. Does this provision already exist somewhere?

● (1025)

The Chair: Mr. Burns.

Mr. Adam Burns (Director General, Fisheries Resource Management, Department of Fisheries and Oceans): I guess the answer would be not specifically, although nothing would preclude a government from making such a request to the minister in a non-legislative way.

Mr. Nicholas Winfield: I would just add that for fisheries closures, the minister may do so through a variation order.

Mr. Adam Burns: Currently that's how the minister does it, yes.

The Chair: Is there any more discussion on NDP-26?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We are on PV-16. If it is adopted CPC-20 becomes moot as they are identical. Also, if PV-16 is defeated, so is CPC-20 as they are identical.

Ms. May.

Ms. Elizabeth May: Madam Chair, of course, had Mr. Donnelly's amendment NDP-26 been shorter, I might have lost a chance to try to get at this one again.

The idea here is to ensure that as we're looking at the regulation-making powers of the minister, we see that the minister may indeed pass regulations, make regulations, conservation measures, emergency measures of all kinds, prohibit fishing of one or more species, prohibit the type of certain fishing gear, and so on.

My amendment provides an opportunity for a government of a province or a governing indigenous body to request of the minister that such regulations to prohibit fishing of one or more species, populations, assemblies, or stocks of fish might be taken, and the minister must respond to such a request from a provincial government or indigenous governing body within 90 days, and with reasons.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: CPC-20 also is deleted.

(Clause 32 agreed to on division)

(Clauses 33 to 39 inclusive agreed to on division)

(On clause 40)

The Chair: We have LIB-10. If LIB-10 is adopted, LIB-11 cannot be moved as there is a line conflict.

Mr. Rogers.

Mr. Churence Rogers: Madam Chair, we're suggesting the removal of paragraph (e). Other than that, we move the amendment as presented. This is in keeping with amendments that we put forward for Bill C-69.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: We're on NDP-27. If it is adopted...well, LIB-11 cannot be moved now anyway.

Mr. Fin Donnelly: Madam Chair, this just protects traditional knowledge.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: My apologies, I made a mistake earlier. Because (e) was removed, LIB-11 can be moved at this time. I apologize for that.

The vote on LIB-11 applies to LIB-13. They are consequential.

Mr. Hardie.

Mr. Ken Hardie: This basically introduces the requirement for the minister to consult before releasing information provided by indigenous communities, particularly disclosing certain information that may be sensitive in that community.

● (1030)

The Chair: Is there any discussion on LIB-11?

Mr. Arnold.

Mr. Mel Arnold: Madam Chair, I'm wondering how this is going to affect project proponents who may have their project denied without finding out why. They could end up doing, I guess, a big Ping-Pong battle back and forth, reapplying without knowing why they were denied the first time.

The Chair: Are you asking the officials?

Mr. Mel Arnold: I guess the officials would be the first people to ask.

Mr. Nicholas Winfield: The minister must provide the reasons for his decision in terms of issuing or not issuing an authorization.

Mr. Mel Arnold: But he's not allowed to disclose the indigenous knowledge.

Mr. Nicholas Winfield: If that indigenous knowledge has been protected, then that knowledge cannot be shared.

Mr. Mel Arnold: As I say, proponents may never know why their project was denied.

Is that correct?

Mr. Nicholas Winfield: I can't answer that, because it depends what information has been shared with the proponent. The minister must protect the information provided by indigenous people. The minister may have other reasons for rejecting a project, and he would give his reasons.

The Chair: Mr. Hardie.

Mr. Ken Hardie: Madam Chair, perhaps the staff could give us a practical example of why the minister would choose to protect information provided by the indigenous community.

Mr. Nicholas Winfield: A key example would be where there are traditional uses of lands and resources by indigenous people. It could be a sacred site. It could be an area used for traditional purposes for fishing, the location of which indigenous people do not wish to disclose.

The Chair: Mr. Arnold.

Mr. Mel Arnold: To the officials, would a proponent be provided with any indication as to why a proposed project was disallowed if the indigenous knowledge was deemed not available for disclosure?

Mr. Nicholas Winfield: I'm struggling to give any more information than I have already.

The minister must provide the reasons for his decision. If there are issues related to traditional knowledge that relate back to the fishery, the minister cannot disclose the specifics of that information, but he could provide a general response as to why he made a decision to oppose a project.

The Chair: Mr. Miller, go ahead.

Mr. Larry Miller: I'm not sure if Mr. Arnold is done.

Mr. Mel Arnold: Not quite, I'm sorry.

Would the information provided by the minister to the proponent be anything more than the decision was based on undisclosable indigenous knowledge?

Mr. Nicholas Winfield: That is correct.

Mr. Mel Arnold: That's all that the proponent may receive back on his...?

Mr. Nicholas Winfield: If that is one of the reasons for the minister's decision, but it could be one of many pieces of information that the minister considers in rendering his decision. That's why it's very difficult to say it's exactly the case that you're presenting.

Mr. Mel Arnold: If that were the only reason, is that all that the proponent would receive back: that the reason could not be disclosed?

Mr. Nicholas Winfield: It wouldn't be that the reason cannot be disclosed; it's that the specific information cannot be disclosed.

The Chair: Mr. Miller.

Mr. Larry Miller: I have two or three questions on it.

In the event that the protected knowledge was a sacred site, I think it would be advantageous for the public to know that it was a sacred site. I think they would avoid it, whereas the chances are that people would go into it otherwise, so the rationale doesn't hold water for me, anyway.

I have another question, through you, Madam Chair. Does this same kind of protection of knowledge qualify or is it available for local fishermen? I'll use it in that sense. Basically it sounds like the aboriginal information can be held because maybe it's the honey hole. Well, the same thing should apply, in my opinion, for fishermen. Does it or doesn't it? Is it equal, is what I'm asking.

● (1035)

Mr. Nicholas Winfield: This is only referring to indigenous knowledge, so that's all I can speak to.

Mr. Larry Miller: So it isn't—

Mr. Nicholas Winfield: With respect to the protection of indigenous knowledge is what's being put forward and that's what we are seeking to respect; that is what is moved.

Mr. Larry Miller: So there is a double standard.

Mr. Nicholas Winfield: I can't comment on that.

Mr. Larry Miller: Well, it's pretty obvious there is.

The Chair: Thank you, Mr. Miller.

Is there any further discussion on LIB-11?

Mr. Donnelly.

Mr. Fin Donnelly: I support this. I think this is a good addition.

To Mr. Miller's point, there are constitutional requirements here and I think that's different.

I support the government's side and their motion here.

(Amendment agreed to on division [See *Minutes of Proceedings*])

The Chair: The vote applies to LIB-13 as well.

LIB-12 has been withdrawn.

(Clause 40 as amended agreed to on division)

(Clauses 41 to 48 inclusive agreed to on division)

(On clause 49)

The Chair: We're on PV-17. If PV-17 is adopted, NDP-28 becomes moot, as they are identical. Also, if PV-17 is defeated, so is NDP-28, as they are identical.

Ms. May, on PV-17, please.

Ms. Elizabeth May: Madam Chair, as this is my last amendment, I just want to take a moment to commend the permanent members of this committee on the wonderful way in which you work together, and the expeditious and fair way you've approached clause-by-clause on Bill C-68.

I will apologize that due to the motions I mentioned earlier—the ones I don't like, and you'll remember them—today I have to be at clause-by-clause for Bill C-68, Bill C-69, and Bill C-74, and Bill C-69 and Bill C-74 are happening at the same time, so I'll be leaving very shortly.

I just want to say that my amendment, PV-17, is to provide a requirement. It's great that this bill has included a five-year review process. I think that's appropriate, but what my amendment would do —not to go through every detail of it—would be to ensure that when that five-year review comes up, whatever committee is mandated to review the Fisheries Act as it has been amended by Bill C-68 would have reports from the minister that cover really significant bits of information that would allow a committee to make a good assessment. The minister would give them the report on the assessment of the state of our fisheries and the state of the fisheries stock, a review of what's been done under provisions of this act relating to the undertakings for which there were exemptions, and a list of all fish habitat where there have been no net loss and other offset measures.

I won't give you all the details, but that's the intent of this amendment, to have the Minister of Fisheries have an affirmative duty to prepare a series of reports for the use of the committee that reviews this bill in five years' time.

The Chair: Mr. Donnelly.

Mr. Fin Donnelly: Madam Chair, given that this motion is the same as NDP-28, I'd like to speak to it. This is our final NDP motion.

We certainly appreciate the committee considering these amendments. It takes a lot of work to improve legislation, and there is good discussion both ways. I appreciate the government members' consideration.

NDP-28, which is very similar to PV-17, requires that the review of the act include these additional topics as part of the review by the committees: (a) a systematic assessment of the state of fish and fish habitat across Canada; (b) a list of all authorized fish habitat damaged during the relevant time period; (c) a list of all required habitat compensation during the relevant time period; and (d) summary statistics from the public registry.

I want to note that the West Coast Environmental Law Association provided a brief on Bill C-68, and I appreciated their input. All witnesses provided this committee with a lot of very detailed and helpful suggestions. Certainly the WCELA's brief was extremely helpful.

I want to mention what they said:

> Monitoring of compliance and effectiveness of habitat restoration has been found to be unsystematic and therefore compromises the ability to assess whether proponents are meeting required conditions.
>
> Regular reporting on the status of restoration and offsetting decisions, monitoring, and outcomes enables evaluation of whether objectives are being achieved.
>
> In the United States, the National Fish Habitat Partnership, a coalition of anglers, conservation groups, scientists, industry, and state and federal agencies was formed in 2006 with the priority goals of preparing five-year comprehensive assessments of the condition of fish habitat across the US. These assessments have been produced in 2010 and 2015, and have identified key areas of degraded habitat and drivers of degradation.
>
> We recommend amending section 92 which now says that a five year report to this Committee or the Senate Committee should be prepared on "the provisions and operation of this Act" to also mandate the preparation of a systematic report on the state of fish habitat, fish habitat damage authorized by DFO, habitat compensation required by DFO, and the status of ongoing monitoring efforts across the country.

I wanted to get that in before the fate of this amendment was voted on.

● (1040)

The Chair: Is there any further discussion on PV-17?

Mr. Hardie.

Mr. Ken Hardie: Madam Chair, again, I'll look to staff. Clearly, this recipe should be held out to future fisheries committees in the debate on estimates and perhaps even focused studies. Are there other mechanisms that require this kind of report to be prepared and made available?

Mr. Nicholas Winfield: Currently, the only report is the annual report to Parliament, which is required under this act. It is primarily descriptive and statistical in nature. It doesn't delineate the details outlined in new proposed paragraphs 92(2)(a), (b), (c), and (d). It does cover (d), but it doesn't cover (a), (b), and (c).

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 49 agreed to on division)

(Clauses 50 to 52 inclusive agreed to on division)

The Chair: Seeing as it's one minute before we're supposed to wrap up, I will stop here. We'll start on clause 53 when we return on Thursday.

Because we do not have a great deal to go forward with on Thursday, I would also suggest that members come prepared for version two of the MPA study and/or version one of the vessel length policy. We will send out an email to that effect.

Great work, everyone. Thank you.

The meeting is adjourned.

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